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10/664,699	09/18/2003	John Leary	ADAMSRL031A	4708
20995 7590 12/03/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER PASCHALL, MARK H				
ART UNIT 3742		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: JOHN LEARY, THOMAS J. SIEVERS, RUTH LI,
KEVIN MCHENRY, DANE IMMEL and TJ DEJONG

Application No. 10/664,699
Technology Center 3700

Mailed: December 2, 2009

Before DEBORAH L. PERRY *Supervisory Paralegal Specialist, Review Team.*

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on August 10, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER, MISSING CERTIFIED TRANSLATION

The Examiner relied on the foreign reference(s) EP 350453 A1 in rejecting the claims. Full certified English translation(s) of the above noted foreign reference(s) are not of record in the Image File Wrapper (IFW).

When an Examiner relies on a document “in a language other than English, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added). MPEP §1207.02. Pursuant to a memorandum dated April 29, 2002 by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy:

Effective immediately, no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision where: (1) a rejection is supported in whole or part by an abstract without reference to the underlying document, . . . ; or (2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English.

The memorandum also states “[i]f the document is in a language other than English and the examiner seeks to rely on that document, a translation *must* be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection” (emphasis added).

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

- 1) to obtain full certified English language translation for the EP 350453 reference; and
- 2) to complete the IFW by having the translation obtained scanned into the IFW file; and
- 3) to provide copies of the translations obtained to Appellant(s); and
- 4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DLP/dw

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